

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 227

Citations Affected: IC 4-23-25-9; IC 4-33-5-1.5; IC 4-35-10-3; IC 5-2-6-23; IC 33-37-7-2; IC 35-33-8-3.2; IC 35-37-6; IC 35-38-1-30; IC 35-46-1-15.1; IC 4-23-25-11.

Synopsis: Domestic violence and invasion of privacy. Conference committee report for ESB 227. Renames the "sexual assault standards and certification board" as the "sexual assault victims advocate standards and certification board" and moves control of the board to the criminal justice institute from the department of workforce development. Moves the sexual assault victims assistance account and all balances and encumbrances to the criminal justice institute from the department of workforce development. Removes the executive director of the commission for women from membership on the commission and adds representatives of the office of family and social services and state department of health as members. Provides that victim advocates and victim services providers may not give testimony, produce records, or disclose certain confidential communications and confidential information without the victim's consent. Provides that a victim may not be forced to consent to the disclosure of confidential information in order to receive services. Requires a victim to be notified if confidential information is disclosed. Makes certain information obtained as part of an application for certain gaming licenses confidential. Allows a court: (1) to prohibit a defendant who has not been released from lawful detention from contacting a particular individual; and (2) to require, as a part of a person's executed sentence, that the person refrain from contact with a particular individual. Makes it a Class A misdemeanor to contact a particular individual in violation of: (1) a prohibition imposed on a defendant while in lawful detention; or (2) a requirement imposed as a condition of an executed sentence. Makes conforming changes. Repeals provisions being superseded by this bill. **(This conference committee report: (1) makes technical changes; (2) adds certain types of information which, if obtained through certain gaming license applications, are confidential; and (3) adds exceptions to the victim privileges and confidentiality protections.)**

Effective: Upon passage; July 1, 2008.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 227 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 4-23-25-9, AS AMENDED BY P.L.126-2006,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 UPON PASSAGE]: Sec. 9. The department of workforce development
- 5 established by IC 22-4.1-2 shall provide staff and administrative
- 6 support to
- 7 ~~(1) the commission. and~~
- 8 ~~(2) the sexual assault standards and certification board.~~
- 9 SECTION 2. IC 4-33-5-1.5, AS ADDED BY P.L.125-2006,
- 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 UPON PASSAGE]: Sec. 1.5. **(a)** The following information submitted,
- 12 collected, or gathered as part of an application to the commission for
- 13 a license is confidential for purposes of IC 5-14-3-4:
- 14 (1) Any information concerning a minor child of an applicant.
- 15 (2) The Social Security number of an applicant or the spouse of
- 16 an applicant.
- 17 (3) The home telephone number of an applicant, or the spouse **or**
- 18 **children** of an applicant.
- 19 (4) An applicant's birth certificate.
- 20 (5) An applicant's **or applicant's spouse's** driver's license
- 21 number.
- 22 (6) The name or address of a previous spouse of the applicant.

(7) The date of birth of the spouse of an applicant.

(8) The place of birth of the spouse of an applicant.

(9) The personal financial records of an applicant or the spouse or minor child of an applicant.

(10) Any information concerning a victim of domestic violence, sexual assault, or stalking.

(11) The electronic mail address of an applicant or spouse or family member of the applicant.

(b) Except as provided in subsections (c) and (d), in addition to information that is confidential under subsection (a), all information maintained by the commission concerning an individual who holds, held, or has applied for an occupational license under this article:

(1) is confidential for purposes of IC 5-14-3; and

(2) may be released by the commission only for law enforcement purposes or to a state or local public agency.

(c) The following information concerning an individual who holds, held, or has applied for an occupational license under this article is not confidential:

(1) The individual's name.

(2) The individual's place of employment.

(3) The individual's job title.

(4) The individual's gaming experience.

(5) The reason for denial or revocation of a license or for disciplinary action against the individual.

(6) Information submitted by the individual for a felony waiver request under IC 4-33-8-11.

(d) An individual who holds, held, or has applied for an occupational license under this article may waive the confidentiality requirements of subsection (b).

SECTION 3. IC 4-35-10-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The following information submitted, collected, or gathered as part of an application to the commission for a license is confidential for purposes of IC 5-14-3-4:

(1) Any information concerning a minor child of an applicant.

(2) The Social Security number of an applicant or the spouse of an applicant.

(3) The home telephone number of an applicant or the spouse or children of an applicant.

(4) An applicant's birth certificate.

(5) An applicant's or applicant's spouse's driver's license number.

(6) The name or address of a previous spouse of the applicant.

(7) The date of birth of the spouse of an applicant.

(8) The place of birth of the spouse of an applicant.

(9) The personal financial records of an applicant or the spouse or minor child of an applicant.

(10) Any information concerning a victim of domestic violence, sexual assault, or stalking.

(11) The electronic mail address of an applicant or spouse or

1 family member of the applicant.

2 (b) Except as provided in subsections (c) and (d), in addition to
3 information that is confidential under subsection (a), all
4 information maintained by the commission concerning an
5 individual who holds, held, or has applied for an occupational
6 license under this article:

7 (1) is confidential for purposes of IC 5-14-3; and

8 (2) may be released by the commission only for law
9 enforcement purposes or to a state or local public agency.

10 (c) The following information concerning an individual who
11 holds, held, or has applied for an occupational license under this
12 article is not confidential:

13 (1) The individual's name.

14 (2) The individual's place of employment.

15 (3) The individual's job title.

16 (4) The individual's gaming experience.

17 (5) The reason for denial or revocation of a license or for
18 disciplinary action against the individual.

19 (6) Information submitted by the individual for a felony
20 waiver request under IC 4-33-8-11.

21 (d) An individual who holds, held, or has applied for an
22 occupational license under this article may waive the
23 confidentiality requirements of subsection (b).

24 SECTION 4. IC 5-2-6-23 IS ADDED TO THE INDIANA CODE
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 23. (a) As used in this section, "board"
27 refers to the sexual assault victim advocate standards and
28 certification board established by subsection (c).

29 (b) As used in this section, "rape crisis center" means an
30 organization that provides a full continuum of services, including
31 hotlines, victim advocacy, and support services from the onset of
32 the need for services through the completion of healing, to victims
33 of sexual assault.

34 (c) The sexual assault victim advocate standards and
35 certification board is established. The board consists of the
36 following twelve (12) members appointed by the governor:

37 (1) A member recommended by the prosecuting attorneys
38 council of Indiana.

39 (2) A member from law enforcement.

40 (3) A member representing a rape crisis center.

41 (4) A member recommended by the Indiana Coalition Against
42 Sexual Assault.

43 (5) A member representing mental health professionals.

44 (6) A member representing hospital administration.

45 (7) A member who is a health care professional (as defined in
46 IC 16-27-1-1) qualified in forensic evidence collection and
47 recommended by the Indiana chapter of the International
48 Association of Forensic Nurses.

49 (8) A member who is an employee of the Indiana criminal
50 justice institute.

51 (9) A member who is a survivor of sexual violence.

(10) A member who is a physician (as defined in IC 25-22.5-1-1.1) with experience in examining sexually abused children.

(11) A member who is an employee of the office of family and social services.

(12) A member who is an employee of the state department of health, office of women's health.

(d) Members of the board serve a four (4) year term. Not more than seven (7) members appointed under this subsection may be of the same political party.

(e) The board shall meet at the call of the chairperson. Seven (7) members of the board constitute a quorum. The affirmative vote of at least seven (7) members of the board is required for the board to take any official action.

(f) The board shall:

(1) develop standards for certification as a sexual assault victim advocate;

(2) set fees that cover the costs for the certification process;

(3) adopt rules under IC 4-22-2 to implement this section;

(4) administer the sexual assault victims assistance account established by subsection (h); and

(5) certify sexual assault victim advocates to provide advocacy services.

(g) Members of the board may not receive a salary per diem. Members of the board are entitled to receive reimbursement for mileage for attendance at meetings. Any other funding for the board is paid at the discretion of the director of the office of management and budget.

(h) The sexual assault victims assistance account is established within the state general fund. The board shall administer the account to provide financial assistance to rape crisis centers. Money in the account must be distributed to a statewide nonprofit sexual assault coalition as designated by the federal Centers for Disease Control and Prevention under 42 U.S.C. 280 et seq. The account consists of:

(1) amounts transferred to the account from sexual assault victims assistance fees collected under IC 33-37-5-23;

(2) appropriations to the account from other sources;

(3) fees collected for certification by the board;

(4) grants, gifts, and donations intended for deposit in the account; and

(5) interest accruing from the money in the account.

(i) The expenses of administering the account shall be paid from money in the account. The board shall designate not more than ten percent (10%) of the appropriation made each year to the nonprofit corporation for program administration. The board may not use more than ten percent (10%) of the money collected from certification fees to administer the certification program.

(j) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested.

(k) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(l) The governor shall appoint a member of the commission each year to serve a one (1) year term as chairperson of the board.

SECTION 5. IC 33-37-7-2, AS AMENDED BY P.L.174-2006, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).
- (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (6) IC 33-37-4-7(a) (probate costs fees).
- (7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child

advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by ~~IC 4-23-25-11(i)~~ **IC 5-2-6-23(h)** one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in the county general fund.

(2) One hundred percent (100%) of the small claims garnishee service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for deposit in the county general fund.

(i) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the following:

(1) The public defense administration fee collected under IC 33-37-5-21.2.

(2) The judicial salaries fees collected under IC 33-37-5-26.

(3) The DNA sample processing fees collected under IC 33-37-5-26.2.

(4) The court administration fees collected under IC 33-37-5-27.

(j) The clerk of a circuit court shall semiannually distribute to the

auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.

(k) The proceeds of the service fee collected under IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(l) The proceeds of the garnishee service fee collected under IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

SECTION 6. IC 35-33-8-3.2, AS AMENDED BY P.L.1-2007, SECTION 226, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;

(D) post a real estate bond; or

(E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual, **including if the defendant has not been released from lawful detention.**

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order

the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 7. IC 35-37-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) As used in this chapter, "confidential communication" means any information:

(1) exchanged between a victim and a victim ~~counselor~~ **advocate** in private or in the presence of a third party who is necessary to facilitate communication or further the counseling process; and the course of the relationship between the victim and the victim advocate;

(2) **exchanged or** disclosed in the course of the counselor's treatment of the victim for any emotional or psychological condition resulting from a covered act; ~~a support group in which~~ **a support group in which** a victim is or was a participant; or

(3) exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.

(b) The term includes communication that is verbal or written and includes:

(1) advice;

(2) notes;

(3) reports;

(4) statistical data;

(5) memoranda;

(6) working papers;

1 (7) records; and
 2 (8) personally identifying information;
 3 **produced in the course of advocating for a victim.**

4 SECTION 8. IC 35-37-6-1.5 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2008]: **Sec. 1.5. (a) As used in this chapter, "confidential**
 7 **information" includes:**

8 (1) personally identifying information;
 9 (2) descriptions of physical appearance;
 10 (3) the case file; and
 11 (4) the case history;
 12 **of a person who seeks, receives, or has received services from a**
 13 **victim advocate.**

14 **(b) The term does not include:**

15 (1) information disclosed to a victim service provider or a
 16 victim advocate if the victim:
 17 (A) files criminal charges;
 18 (B) institutes a civil lawsuit; or
 19 (C) reports allegations of criminal conduct to a law
 20 enforcement agency;
 21 against the victim service provider or victim advocate; and
 22 (2) alleged child abuse or neglect that is required to be
 23 reported under IC 31-33.

24 SECTION 9. IC 35-37-6-2.5 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2008]: **Sec. 2.5. (a) As used in this chapter, "personally**
 27 **identifying information" means information that identifies a victim**
 28 **or the location where domestic violence, dating violence, sexual**
 29 **assault, or stalking occurred, including the victim's:**

30 (1) name;
 31 (2) mailing and physical address;
 32 (3) electronic mail address;
 33 (4) Internet protocol address;
 34 (5) telephone numbers, including facsimile numbers;
 35 (6) Social Security number;
 36 (7) date of birth;
 37 (8) racial or ethnic background; and
 38 (9) religious affiliation.

39 **(b) The term includes any other information that, in**
 40 **combination with other nonpersonally identifying information,**
 41 **would identify an individual.**

42 SECTION 10. IC 35-37-6-3 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 3. As used in this**
 44 **chapter, "victim" means: an individual**

45 (1) **an individual** against whom a ~~covered act~~ **act of:**
 46 (A) domestic or family violence;
 47 (B) dating violence;
 48 (C) sexual assault (as defined in IC 5-26.5-1-8);
 49 (D) human and sexual trafficking (IC 35-42-3.5); or
 50 (E) stalking (IC 35-45-10-5);

51 **is committed; or**

(2) **an individual:**

(A) ~~other than an individual who is who is not~~ accused of committing a ~~covered act~~, **an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and**

(B) who:

- (i) is the parent, stepparent, child, stepchild, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew of the individual described in subdivision (1); a member of the family of an individual described in subdivision (1); but
- (ii) is not a family member who is accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5).

SECTION 11. IC 35-37-6-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.5. (a) As used in this chapter, "victim advocate" means an individual employed or appointed by or who volunteers for a victim services provider.

(b) The term does not include:

- (1) a law enforcement officer;
- (2) an employee or agent of a law enforcement officer;
- (3) a prosecuting attorney; or
- (4) an employee or agent of a prosecuting attorney's office.

(c) The term includes an employee, an appointee, or a volunteer of a:

- (1) victim services provider;
- (2) domestic violence program;
- (3) sexual assault program;
- (4) rape crisis center;
- (5) battered women's shelter;
- (6) transitional housing program for victims of domestic violence; or
- (7) program that has as one (1) of its primary purposes to provide services to an individual:

(A) against whom an act of:

- (i) domestic or family violence;
- (ii) dating violence;
- (iii) sexual assault (as defined in IC 5-26.5-1-8);
- (iv) human and sexual trafficking (IC 35-42-3.5); or
- (v) stalking (IC 35-45-10-5);

is committed; or

(B) who:

- (i) is not accused of committing an act of domestic or family violence, dating violence, sexual assault (as defined in IC 5-26.5-1-8), human and sexual trafficking (IC 35-42-3.5), or stalking (IC 35-45-10-5); and
- (ii) is a member of the family of an individual described in clause (A) other than a family member who is accused

1 of committing an act of domestic or family violence,
 2 dating violence, sexual assault (as defined in
 3 IC 5-26.5-1-8), human and sexual trafficking
 4 (IC 35-42-3.5), or stalking (IC 35-45-10-5).

5 SECTION 12. IC 35-37-6-5 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. As used in this
 7 chapter, "victim ~~counseling center~~" **service provider**" means a
 8 **person:**

9 **(1) that is:**

10 ~~(1)~~ **(A)** a public agency;

11 ~~(2)~~ **(B)** a unit of a public agency; or

12 ~~(3)~~ **(C)** an organization that is exempt from federal income
 13 taxation under Section 501 of the Internal Revenue Code;

14 **(2)** that is not affiliated with a law enforcement agency; ~~and~~

15 **(3) that** has, as one (1) of its primary purposes, ~~the treatment of~~
 16 **to provide services victims** for emotional and psychological
 17 conditions that occur ~~as a result of covered acts:~~ **to an individual:**

18 **(A) against whom an act of:**

19 **(i) domestic or family violence;**

20 **(ii) dating violence;**

21 **(iii) sexual assault (as defined in IC 5-26.5-1-8);**

22 **(iv) human and sexual trafficking (IC 35-42-3.5); or**

23 **(v) stalking (IC 35-45-10-5);**

24 **is committed; or**

25 **(B) who:**

26 **(i) is not accused of committing an act of domestic or**
 27 **family violence, dating violence, sexual assault (as**
 28 **defined in IC 5-26.5-1-8), human and sexual trafficking**
 29 **(IC 35-42-3.5), or stalking (IC 35-45-10-5); and**

30 **(ii) is a member of the family of an individual described**
 31 **in clause (A) other than a family member who is accused**
 32 **of committing an act of domestic or family violence,**
 33 **dating violence, sexual assault (as defined in**
 34 **IC 5-26.5-1-8), human and sexual trafficking**
 35 **(IC 35-42-3.5), or stalking (IC 35-45-10-5).**

36 SECTION 13. IC 35-37-6-8 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. This chapter does not
 38 relieve a victim ~~counselor~~ **advocate** of any duty to report suspected
 39 abuse, neglect, battery, or exploitation under IC 12-10-3, IC 31-33, or
 40 IC 35-46-1-13.

41 SECTION 14. IC 35-37-6-9 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The following
 43 persons **or entities** may not be compelled to give testimony, ~~or~~ to
 44 produce records, **or to disclose any information** concerning
 45 confidential communications **and confidential information to anyone**
 46 **or** in any judicial, legislative, or administrative proceeding:

47 **(1) A victim.**

48 **(2) A victim ~~counselor~~, advocate or victim service provider**
 49 **unless the victim specifically consents to the disclosure in a**
 50 **written authorization that contains the date the consent**
 51 **expires.**

(3) ~~An unemancipated child less than eighteen (18) years of age or an incapacitated victim; unless a custodial parent, custodian, guardian, or guardian ad litem who is not accused of a covered act consents to the disclosure.~~

(b) A victim ~~counselor~~ **advocate, victim service provider**, or a victim may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) **A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning confidential communications and confidential information as a condition of the victim receiving services.**

(d) **This section does not prohibit a victim from providing testimony concerning an offense.**

(e) **The consent to disclose information on behalf of:**

(1) **a child who is less than eighteen (18) years of age and is unemancipated; or**

(2) **an incapacitated victim;**

may be made by a custodial parent, custodian, guardian, or guardian ad litem in a written authorization that contains the date the consent expires.

(f) **A consent under subsection (e) may not be given by a custodial parent, custodian, guardian, or guardian ad litem of the victim if the custodial parent, custodian, guardian, or guardian ad litem:**

(1) **committed; or**

(2) **is alleged to have committed;**

an offense against the victim.

SECTION 15. IC 35-37-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. A victim ~~counselor~~ **advocate** may not waive the protections afforded to a victim under this chapter. However, if:

(1) a victim brings suit against a victim ~~counselor~~, **advocate** or victim ~~counseling center~~ **service provider** in which the victim ~~counselor~~ **advocate** was employed or served as a volunteer at the time of the counseling relationship; and

(2) the suit alleges malpractice during the ~~counseling~~ relationship; the victim ~~counselor~~ **advocate** may testify or produce records regarding confidential communications with the victim and is not liable for doing so.

SECTION 16. IC 35-37-6-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 13. (a) Except as provided in subsection (d):**

(1) **a victim; or**

(2) **in the case of a deceased victim, the victim's personal representative;**

may authorize a victim advocate or victim service provider to

1 release confidential information or other information by signing a
 2 written authorization that specifies what information will be
 3 released and to whom the information will be released.

4 (b) The authorization described in subsection (a) must include
 5 a date the authorization expires.

6 (c) A victim advocate shall make reasonable attempts to notify
 7 a victim when a victim service provider or victim advocate is
 8 required to disclose confidential information or confidential
 9 communications.

10 (d) A consent for release may not be given by a personal
 11 representative of the victim if the personal representative:

12 (1) abused or killed the victim;

13 (2) is alleged to have abused or killed the victim; or

14 (3) assisted another person in abusing or killing the victim.

15 SECTION 17. IC 35-37-6-14 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) This section does not:

18 (1) relieve a prosecuting attorney of the constitutional and
 19 ethical obligation to disclose exculpatory evidence; and

20 (2) prohibit impeachment of a victim as permitted by the
 21 Indiana Rules of Evidence.

22 (b) A victim does not waive any privileges or confidentiality
 23 protections under this chapter if the victim:

24 (1) testifies about underlying acts of domestic violence, dating
 25 violence, sexual assault, or stalking; or

26 (2) reveals that he or she used or attempted to use the services
 27 of a victim service provider or victim advocate.

28 SECTION 18. IC 35-37-6-15 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2008]: Sec. 15. The partial disclosure of a
 31 confidential communication under this chapter does not waive any
 32 privilege concerning the remainder of the confidential
 33 communication.

34 SECTION 19. IC 35-37-6-16 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2008]: Sec. 16. The fact that a victim or
 37 victim advocate refuses to testify or disclose information because
 38 of a privilege under this chapter does not raise any negative
 39 inferences or presumptions.

40 SECTION 20. IC 35-37-6-17 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2008]: Sec. 17. A victim service provider may
 43 disclose information in the aggregate that does not identify a victim
 44 regarding services and demographic information to comply with
 45 federal or state data collection requirements.

46 SECTION 21. IC 35-38-1-30 IS ADDED TO THE INDIANA
 47 CODE AS A NEW SECTION TO READ AS FOLLOWS
 48 [EFFECTIVE JULY 1, 2008]: Sec. 30. A sentencing court may
 49 require that, as a condition of a person's executed sentence, the
 50 person shall refrain from any direct or indirect contact with an
 51 individual.

SECTION 22. IC 35-46-1-15.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15.1. A person who knowingly or intentionally violates:

(1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(3) a workplace violence restraining order issued under IC 34-26-6;

(4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion;

(6) a no contact order issued as a condition of probation;

(7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9); ~~or~~

(11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(12) an order issued under IC 35-33-8-3.2; or

(13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

SECTION 23. IC 4-23-25-11 IS REPEALED [EFFECTIVE UPON

1 PASSAGE].

2 SECTION 24. THE FOLLOWING ARE REPEALED [EFFECTIVE
3 JULY 1, 2008]: IC 35-37-6-2; IC 35-37-6-4; IC 35-37-6-6.

4 SECTION 25. [EFFECTIVE UPON PASSAGE] (a) **All**
5 **appropriations made to the sexual assault victims assistance**
6 **account established by IC 4-23-25-11(i), before its repeal by this**
7 **act, are transferred to the sexual assault victims assistance account**
8 **established by IC 5-2-6-23(h), as added by this act.**

9 (b) **All balances in the sexual assault victims assistance account**
10 **established by IC 4-23-25-11(i), before its repeal by this act, are**
11 **transferred to the sexual assault victims assistance account**
12 **established by IC 5-2-6-23(h), as added by this act.**

13 (c) **Any obligations or encumbrances incurred by the sexual**
14 **assault victims assistance account established by IC 4-23-25-11(i),**
15 **before its repeal by this act, are obligations or encumbrances of the**
16 **sexual assault victims assistance account established by**
17 **IC 5-2-6-23(h), as added by this act.**

18 (d) **This SECTION expires July 1, 2009.**

19 SECTION 26. [EFFECTIVE UPON PASSAGE] (a) **Members**
20 **appointed to the sexual assault standards and certification board**
21 **under IC 4-23-25-11, before its repeal by this act, are members of**
22 **the sexual assault victim advocate standards and certification**
23 **board established by IC 5-2-6-23, as added by this act.**

24 (b) **Members appointed under subsection (a) shall serve for the**
25 **terms for which they were originally appointed.**

26 (c) **The members appointed to the sexual assault victim advocate**
27 **standards and certification board under IC 5-2-6-23(c)(11) and**
28 **IC 5-2-6-23(c)(12), as added by this act, are initially appointed for**
29 **a term of four (4) years.**

30 (d) **This SECTION expires December 31, 2012.**

31 SECTION 27. **An emergency is declared for this act.**

(Reference is to ESB 227 as reprinted February 27, 2008.)

Conference Committee Report
on
Engrossed Senate Bill 227

Signed by:

Senator Becker
Chairperson

Representative Lawson L

Senator Sipes

Representative Crouch

Senate Conferees

House Conferees